

## ***(PREPARATION CONTINUED)***

A WITNESSES' TESTIMONY MUST CONCERN FACTS ABOUT WHICH HE OR SHE HAS PERSONAL KNOWLEDGE. THE ALJ WILL CONSIDER ONLY THE EVIDENCE PRODUCED FOR THE RECORD DURING THE HEARING, SO IT IS VITAL YOU PRESENT ALL INFORMATION YOU WANT CONSIDERED.

## **DURING THE HEARING**

FAIR HEARINGS ARE KEPT AS INFORMAL AS POSSIBLE, BUT ARE CONDUCTED IN A MANNER CONSISTENT WITH THE RIGHTS OF THE PARTIES AND WITH RESPECT AND DIGNITY TO ALL PERSONS INVOLVED.

THE ALJ WILL OPEN THE HEARING BY EXPLAINING HOW THE HEARING WILL BE CONDUCTED AND THE PARTIES' RIGHTS.

- LISTEN CAREFULLY.
- BE PREPARED TO EXPLAIN YOUR POSITION FULLY AND TRUTHFULLY.
- BRING PEN AND PAPER FOR NOTES.
- AVOID REPETITION.
- ASK SHORT, TO-THE-POINT QUESTIONS.

STATE LEGAL OBJECTIONS AND THE ALJ WILL MAKE A RULING.

**NOTE:** This brochure is not intended as a substitute for legal representation.

## **AN IMPARTIAL HEARING OFFICIAL**

THE ALJ MAKES A DECISION BASED ONLY ON THE EVIDENCE PRESENTED AT HEARING. HE OR SHE ENSURES ALL PARTIES HAVE A FAIR OPPORTUNITY TO BE HEARD AND THAT THE RECORD IS COMPLETE.

THE ALJ WILL NOT PARTICIPATE IN A DISCUSSION WITH YOU OR ANYONE ELSE ABOUT THE FACTS OR MERITS OF YOUR CASE OUTSIDE OF A SCHEDULED HEARING.

FOR MORE INFORMATION ON  
HEARING PROCEDURES:

- SOUTH DAKOTA CODIFIED LAW (SDCL) CHAPTER 1-26
- ADMINISTRATIVE RULES OF SOUTH DAKOTA (ARSD) CHAPTER 67:17.

## **CONTACT INFORMATION**

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# **SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES**

**FAIR HEARINGS:  
HOW TO  
EXERCISE  
YOUR RIGHTS**

## WHAT IS A FAIR HEARING?

IF YOU FEEL THE DEPARTMENT HAS MADE A MISTAKE IN YOUR CASE, YOU MAY BE ENTITLED TO A FAIR HEARING. DURING THIS LEGAL PROCEEDING, AN IMPARTIAL ADMINISTRATIVE LAW JUDGE (ALJ) CONDUCTS A HEARING TO BECOME INFORMED ABOUT THE FACTS OF YOUR CASE. THE ALJ HAS NOT HAD ANY PRIOR INVOLVEMENT IN YOUR CASE. THE ALJ WILL REVIEW THE EVIDENCE PRESENTED AT THE HEARING AND ISSUE A WRITTEN DECISION. ANY APPEAL OF THAT DECISION IS MADE TO CIRCUIT COURT UNDER THE REQUIREMENTS OF SDCL CHAPTER 1-26.

## HOW TO REQUEST A HEARING

YOU MAY REQUEST A FAIR HEARING ORALLY OR IN WRITING BY CONTACTING YOUR CASE-WORKER, SOCIAL WORKER OR THE DEPARTMENT'S OFFICE OF ADMINISTRATIVE HEARINGS. YOU SHOULD REQUEST A HEARING AS SOON AS POSSIBLE AFTER AN ADVERSE ACTION OCCURS.

THE DEADLINE TO REQUEST A FAIR HEARING IS STATED IN THE DEPARTMENT'S NOTICE OF ADVERSE ACTION.

## READ THE NOTICE OF HEARING

YOU WILL RECEIVE ADVANCE WRITTEN NOTICE OF THE HEARING. READ THE ENTIRE NOTICE. IT CONTAINS IMPORTANT INFORMATION ABOUT THE TIME AND PLACE OF THE HEARING AND INFORMS YOU OF YOUR RIGHTS.

## A SPEEDY HEARING

IN MOST CASES, THE ALJ MUST ISSUE A FINAL DECISION WITHIN 90 DAYS (60 DAYS IN FOOD

STAMP CASES) AFTER YOUR HEARING REQUEST. YOU HAVE A RIGHT TO ONE POSTPONEMENT. YOU MAY REQUEST A POSTPONEMENT BY CONTACTING THE OFFICE OF ADMINISTRATIVE HEARINGS AT LEAST 10 DAYS BEFORE THE HEARING. ANY DELAY CAUSED BY YOUR POSTPONEMENT EXTENDS THE DEADLINE FOR A FINAL DECISION IN YOUR CASE.

## ACCESS

ALL INTERESTED PARTIES HAVE A RIGHT TO PARTICIPATE. HEARINGS ARE CONDUCTED BY TELEPHONE, VIDEOCONFERENCE, OR IN PERSON. IF ANY PARTY OR WITNESS IS PHYSICALLY DISABLED; HAS A SPEECH, HEARING OR VISION IMPAIRMENT; OR SPEAKS A LANGUAGE OTHER THAN ENGLISH, NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS SO ARRANGEMENTS MAY BE MADE. IF THE HEARING IS SET BY TELEPHONE AND YOU WOULD PREFER AN IN PERSON HEARING, YOU MUST REQUEST THIS AT LEAST 5 BUSINESS DAYS BEFORE A SCHEDULED HEARING.

## YOU DO NOT HAVE TO GO ALONE

A RELATIVE, FRIEND OR OTHER AUTHORIZED PERSON MAY APPEAR WITH AND ASSIST YOU AT THE HEARING. YOU HAVE A RIGHT TO THE ASSISTANCE OF LEGAL COUNSEL AT YOUR OWN EXPENSE. DO NOT WAIT UNTIL THE DAY OF THE HEARING TO SEEK LEGAL ADVICE. IN SOME CASES, FREE LEGAL ASSISTANCE MAY BE AVAILABLE FROM LEGAL SERVICES. THE ALJ DOES NOT HAVE AUTHORITY TO APPOINT OR SELECT AN ATTORNEY FOR YOU OR TO ORDER ANY PARTY TO PAY ANOTHER'S LEGAL OR OTHER COSTS.

## YOUR RIGHTS

### YOU HAVE THE RIGHT TO:

- REASONABLE ADVANCE NOTICE.
- SEE EVIDENCE BEFORE THE HEARING. AT YOUR REQUEST, THE AGENCY REPRESENTATIVE WILL PROVIDE YOU A FREE COPY OF DOCUMENTS OR OTHER EXHIBITS IT WILL OFFER AS EVIDENCE DURING THE HEARING.
- BE PRESENT WHEN ALL EVIDENCE IS TAKEN.
- PARTICIPATE FULLY. YOU WILL BE ALLOWED TO TESTIFY, BRING WITNESSES, PRESENT EXHIBITS, AND ASK QUESTIONS OR CROSS-EXAMINE WITNESSES.
- BE ASSISTED BY A FRIEND, A RELATIVE OR YOUR LAWYER.
- A DECISION MADE BY AN IMPARTIAL OFFICIAL BASED SOLELY ON THE EVIDENCE PRESENTED.

## PREPARATION

BEFORE THE HEARING, PLAN WHAT YOU WANT TO PRESENT. NOTE QUESTIONS YOU WANT TO ASK, ARGUMENTS YOU WANT TO MAKE, AND KEY POINTS YOU MAY WANT TO REFUTE. KEEP IN MIND WITNESSES NEED SUFFICIENT ADVANCE NOTICE OF THEIR NEED TO APPEAR.

SUBMIT YOUR EXHIBITS TO THE ALJ AT LEAST FIVE DAYS BEFORE THE HEARING. IF YOU ARE TO APPEAR BY TELEPHONE, YOU MUST ALSO SUBMIT A COPY OF YOUR EXHIBITS TO THE DEPARTMENT REPRESENTATIVE AT LEAST FIVE DAYS BEFORE THE HEARING. THIS WAY, THE EXHIBITS ARE AVAILABLE TO ALL DURING THE HEARING. SAVE A COPY FOR YOURSELF SO YOU HAVE YOUR EXHIBITS DURING THE HEARING.